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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,581	01/08/2004	Christopher Lyon	LYON 2 00002	6626
27885	7590	11/15/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			LEVKOVICH, NATALIA A	
			ART UNIT	PAPER NUMBER
			1743	
DATE MAILED: 11/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/753,581	Applicant(s) LYON ET AL.	
	Examiner Natalia Levkovich	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 34-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-33, drawn to a tube holder, classified in class 422, subclass 104.
  - II. Claims 34-36, drawn to a method of collecting samples, classified in class 436, subclass 66.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions III and I, are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used for holding various types of tools and implements.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Karl Hauber on 10/08/2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-33. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 34-36 were withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

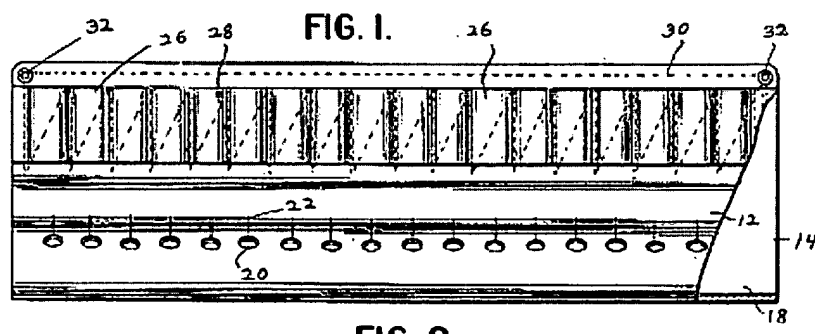
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 4-14, 16-21, 23-25 and 27-32 are rejected under 35 U.S.C. 102(b) as anticipated by Christensen (US 2715487).

Referring to claims 1-2, Christensen discloses a cartridge holder comprising, as shown in Figure 1, an elongated flexible panel 14 ['elongated body', or 'band' – Ex.] with a plurality of cartridge sleeves / retainers 26.



With respect to claims 4, 10, 12, 21, 27 and 30, Christensen discloses two rivets 32 [first and second members for securing the band' – Ex.] fitted into corresponding

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holes.

As to claims 5-6, 9, 16-17, 20, 23, 28 and 32, flexible panels 12 and 14 constitute a guard 'hingedly connected' to the sleeve area of the holder. The 'guard' accommodates a plurality of apertures 20 aligned with the retaining sleeves.

In regards to claims 7, 18 and 29, Christensen discloses stitching 30 ['rim extending along at least one edge' – Ex.].

Pointing to claims 8, 19 and 31, Christensen teaches that the holder is made of "flexible material, as leather or plastic" (Col. 1, line 25).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 3, 15, 22, 26 and 33 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Christensen.

Referring to claims 3, 15 and 26, Christensen does not teach sleeves having different diameters, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed such sleeves in the modified apparatus of Christensen, in order to accommodate cartridges / tubes of various sizes.

As to claims 22 and 33, although Christensen does not teach the holder to include 'identification area', the use of labels or identification codes is well known in the art for a very long time, and the apparatus of Christensen is capable of accommodating such an area. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have arranged an identification area in the modified apparatus of Christensen, in order to record identifying information.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Bieker (US 5577653) discloses a blood collection tube holder comprising a flexible waist band, a pouch that and flexible, cushioning sleeves.

Godshaw et al. (US 6536590) – discloses a tool holder comprising retaining sleeves of various diameters;


Flowers (US 5433359) - discloses a flexible body mountable holder having two band securing members (specifically, VELCRO);

Mawhirt et al. (US 4944924) – discloses a test tube holder having an identification label.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700